JD–137–03
Ponce, PR

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

SEPTIX WASTE, INC.

and

Cases 24–CA–9230
24–CA–9346

UNION DE TRONQUISTAS DE PUERTO RICO,
LOCAL 901, IBT-AFL-CIO

Vanessa Garcia, Esq.,
for the General Counsel.
Jorge P. Sala, Esq.,
of Ponce, Puerto Rico, for the Respondent.

DECISION

Statement of the Case

Karl H. Buschmann, Administrative Law Judge. This case was tried before on March 26 and 27, 2003, in San Juan, Puerto Rico upon a complaint, dated September 30, 2002. The underlying charges were filed by the Union De Tronquistas De Puerto Rico, Local 901, IBT-AFL-CIO (Union) against Septix Waste, Inc. The complaint alleges that the Respondent, Septix Waste, Inc. (Respondent) violated of Section 8(a)(1), (3), and (5) of the National Labor Relations Act (the Act), as follows:

(1) Section 8(a)(1), for (a) interrogating its employees about their union activities, (b) soliciting its employees to gather signatures to decertify the Union, (c) informing its employees that it would be futile to file grievances, (d) threatening its employees with job loss, and (e) telling employees that they would be subject to more onerous working conditions, or reprisals in retaliation for the union's presence as their exclusive bargaining agent.

(2) Section 8(a)(3) for terminating the employment of Roberto Rentas and Hector Algarin, because of their union activities.

(3) Section 8(a)(5) for refusing to furnish the Union with relevant information.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, the Charging Party, and the Respondent, I make the following

Findings of Fact

I. Jurisdiction

The Respondent, a Puerto Rico corporation, located in Ponce, Puerto Rico, is engaged in providing liquid waste disposal services to municipalities and private enterprises. With annual

services in excess of $50,000 to various facilities in Puerto Rico, the Respondent is admittedly an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. The Company's executives, Gary Santos, president, and Lymaris Pacheco, vice-president, are admittedly supervisors and agents within the meaning of Sections 2(11) and 2(13) of the Act.

The Union, Union De Tronquistas De Puerto Rico Local 901, IBT–AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

The Union has represented the Company's service and maintenance employees since 1964. The parties executed a collective-bargaining agreement, effective from January 1, 1999, to January 31, 2004.

II. The Unfair Labor Practices

Septix Waste was formerly part of Ponce Waste, Inc., owned by Eric Santos, father of Gary Santos. Ponce Waste was in the business of processing of solid and liquid waste. On January 1, 1999, Gary Santos and Lymaris Pacheco acquired Septix Waste, which processed liquid waste. Santos served as president and Pacheco was responsible for human resources and accounting. In addition to office and administrative personnel, Septix Waste operated with approximately eight employees as drivers and maintenance workers who were covered by a collective-bargaining agreement, effective January 1, 1999, to December 31, 2004. However, from 1999 to 2001, the contract was largely ignored and rarely enforced. That changed in January 2002.

In January 2002, the Company, experiencing financial difficulties, implemented administrative changes in order to cut costs and to lower expenses. The administrative changes, according to the Respondent, included the layoff of the highly paid manager of operations, Isabelino Estrella, on January 17, 2002 (R. Exh. 27). On the same day, the Respondent informed the employees of Septix Waste about the financial situation at the Company and Estrellas' dismissal.

In January 2002, employees Roberto Rentas and Hector Algarin, who had befriended Estrella, met at his home with other employees to discuss the Union. Also in attendance was Porforio Rosario, who became a supervisor after Estrella's layoff. The employees agreed to become active in the Union. Rentas had contacted the Union and inquired whether the Union had a bargaining agreement with the Respondent. When the employees realized that they were covered by a collective-bargaining agreement, the Union became more active. In the words of the Respondent, "Less than three weeks later, and suddenly, and totally unexpected to the Company, the Union burst into the scene after a two year hiatus [and] unleashed a then apparently irrational, inexcusable and unwarranted offensive against unsuspecting Septix's management after two years of total silence" (R. Br., p.6).

For example, by letter of February 5, 2002, the Union accused Septix Waste with violating the collective-bargaining agreement by failing to comply with the dues-checkoff provision in the contract (R. Exh. 26). Jose Budet was designated on February 13, 2002, as the Union's representative for Septix Waste (R. Exh. 2). He filed several grievances by letter of February 27, 2002, and subsequently additional grievances (R. Exhs. 3, 5, 7, 13). Certain grievances were ultimately resolved (R. Exh. 15). The Union made a request for certain information on July 8, 2002 (GC Exh. 3). The Respondent denied the information request. At about this time, the Respondent discharged two employees, Roberto Rentas and Hector Algarin, ostensibly for misconduct. According to the General Counsel, the discharges were motivated by antiunion animus.

Violations of the Act Relating to Roberto Rentas

Rentas was employed as a driver at Septix Waste from 1999 until he was discharged on February 18, 2002 (GC Exh. 15). He earned $5.52 an hour and was one of the few drivers able to drive a complicated truck with 14 shifts. He initially gathered all the information about the Union and then contacted the Union to find out more about the collective-bargaining agreement at Septix Waste and met with coworkers in November 2001. In January 2002, he attended the meeting at Estrella's home. All the drivers were in attendance. Porforio Rosario, who became a supervisor after Estrella's discharge, was also present at the meeting. Luiz Delia Perez, a representative from the Union, was there to explain the union benefits and the collective-bargaining agreement generally. She gave the employees Jose Budet's telephone number so he, as the union representative, could help them organize. Porforio was a supervisor at the time of the meeting and Estrella was no longer employed with the Company. Porforio had been a driver before becoming a supervisor and was still on friendly terms with the other drivers. Rentas also recalled a meeting in November 2001 at the company gazebo, where Santos, Pacheco, Rosario, and the drivers were present. Santos discussed the local and the global economy. Santos also said that the collective-bargaining agreement would harm the employees more than help them.

Rentas credibly testified about a conversation with Santos on about February 5, 2002, in Estrella's office. Santos told Rentas that the Union had been inactive for 2 years and would not do anything for him now. According to Rentas, Santos said, "And then since he knows that the guys follow me [Rentas], he proposed to me that I get the Union out . . . . He proposed to me to collect signatures from the guys, in order to get the Union out and; he was going to help me to do so" (Tr. 158).

In his testimony Santos denied having had such a conversation. However, Santos' testimony was vague and unconvincing. For example, Santos said he was sure that he did not meet Rentas on either February 5 or 11, 2002, but he also said that he had an open-door policy, and that he frequently met with Rentas, but he was unable to remember any specific time he met Rentas. Considering the demeanor of the witnesses, I credit Rentas.

Rentas also testified about a comment Santos made on February 18, 2002, the day of his discharge. Pacheco, Santos, and Adalina Rosario spoke about how much the Company had helped him, and treated him well, and that he was a traitor. According to Rentas, Santos said, "He knows that I [Rentas] was the one who imposed the Union" (Tr. 174).

At this meeting, Pacheco and Santos handed Rentas his dismissal notice, initialed by Pacheco (GC Exh. 15). The document explains at length his unexcused absence on February 14, 2002, and states, inter alia, as follows:

> This is not the first time that you arrive [sic] late or are absent from work without prior notice, affecting the company operations, causing us great problems and inconveniences without our clients. It is for this reason and because of the infractions that you have been making, without thinking or considering the well being of the company, that effective today, your duties in Septix Waste, Inc., are terminated.

Pacheco's testimony recited the events on February 14, as well as Rentas' prior infractions, as reasons for Rentas' discharge.

The record shows that on February 14, 2002, Rentas did not report for work because of a leg injury. He had attempted to call the Company prior to his scheduled work at 4 a.m. He dialed the supervisors' numbers that were programmed on his cell phone, but he was unable to reach anyone. He finally left a message on Pacheco's voicemail. According to company policy, employees were supposed to call their supervisor and the office secretary who arrives at 7:30 a.m. At 7:40 a.m. he got through to the office and spoke with Wilda Perez. He told her that he would not be in for work. He also informed her that he was going to see a doctor and will have a medical certificate at around noon that day. He was examined by a physician. The doctor's note states that Rentas would not return to work until February 19, 2002 (GC Exh. 14). Rentas delivered the doctor's excuse to the Company and personally handed the note to Pacheco. He also showed his injured leg to her. While on his way home from dropping off the note at the office, employee Katherine Troche, an employee of the Respondent, called him and instructed him to return to the office to drop off his cellular phone and his keys. However, he did not return until the next day, because he had driven a substantial distance away from the Company's location. When he returned on February 15, 2002, the following day, he returned his keys. He no longer had the phone, but he handed in a police claim number for the phone, because it had been stolen. On that same day, Santos told him to return on Monday, February 18, 2002, to meet with management. After being told about the meeting, Rentas called Union Representative, Budet to express his concern that he might be fired. Budet promised him that he would call the Company to make an inquiry. Budet testified that both Santos and Pacheco assured him on the telephone that they would not fire Rentas. Nonetheless, when Rentas returned to the office on February 18, 2002, he received the dismissal notice. The letter contained Pacheco's initials and was given to him by her and Santos. Another employee, Rosario, was also present at the meeting. Rentas was questioned about being at the racetrack the night before his work. Pacheco and Santos expressed their disappointment of Rentas running an automobile at the Salinas Race Track until 9 or 9:30 p.m., on the night before his scheduled workday. During the meeting, Pacheco and Santos accused Rentas of being a traitor, because he was responsible for the union activity. Rentas responded to the discharge notice by letter of February 20, 2002, stating that he disagreed with the action taken (GC Exh. 16).

Rentas' disciplinary history dates back to March 14, 2000, when he was suspended for leaving a route unfinished because he had not fueled his truck (R. Exh. 36). On September 10, 2000, he received a warning for leaving a truck unattended after it had broken down (R. Exh. 39). On August 10, 2000, he received a warning for several reasons, including his improper use of the cell phone (R. Exh. 38). He was warned for being late by memorandum of November 30, 2000.

Rentas received warnings about his misuse of toll booth tickets on December 4, 2001, and February 15, 2002 (R. Exhs. 33, 35). On September 10, 2001, Rentas was disciplined for not emptying tow drum tanks. As a result, the Company had to incur the cost of having someone else substitute and complete the job (R. Exh. 42). Rentas received a warning for being late on December 28, 2001, and for his failure to call in a timely manner. On January 4, 2002 Rentas received a reminder for lateness (R. Exh. 34). On January 10, 2002, Rentas received a warning because he did not report to work and failed to notify the Company (R. Exh. 21). It is disputed whether or not he was supposed to report to work that day. Rentas testified that it was customary at Septix Waste for employees to have weekdays off after completing 32 hours of work. Rentas was paid for 32 hours that week even though he had worked a night route the night before (R. Exhs. 31, 33). Even though Rentas' disagreed with management about his duty to work on January 10, 2002, he signed the reprimand.

In sum, the record shows that Rentas had accumulated numerous absences or warnings during his last 2 years of employment, but that the Company had not discharged him until his absence on February 14, 2002.

The Respondent violated Section 8(a)(1) of the Act on February 5, 2002, during the conversation between Santos and Rentas in Estrella's office. I have credited Rentas' recollection of the events, and find that the Respondent unlawfully solicited its employee to gather signatures to decertify the Union. Santos, speaking about the failure of the Union to accomplish anything for the past 2 years suggested that "the guys fellow you [Rentas] . . . that I [Rentas] get the Union out" and that Santos would help him do so. It is well settled that an employer's efforts to solicit employees to persuade their follow employees to abandon their allegiance to the Union violates Section 8(a)(1) of the Act. *Farah Supermarkets*, 228 NLRB 981, 988 (1977). I accordingly find that the Respondent violated Section 8(a)(1) of the Act.

The allegation in the complaint that the Respondent coercively interrogated its employee on February 18, 2002 during the meeting with Rentas, is not supported by the record. To be sure, Santos and Pacheco referred to Rentas as a traitor and Santos said that he knew that he was the one who "had imposed the union." However, this conduct might be considered objectionable under the Act, but it does not amount to an act of unlawful interrogation. I would accordingly dismiss this aspect of the complaint.

Considering the Respondent's unequivocal expression if antiunion sentiment, I find the Respondent reasons for Rentas' discharge to be pretextual. Initially, the record shows that Rentas had taken the necessary steps to avoid an unexcused absence. he had attempted to call management prior to his 4 a.m. starting time. Although, the Respondent disputes Rentas' attempts to properly notify the Company, stating that an employee must notify the Company in advance of the scheduled working time, the Respondent concedes that Rentas called at 7:40 a.m. the operations secretary at the Company to report his absence. On the same day, Rentas submitted to the Respondent and delivered to Pacheco, personally, his medical statement that he was on sick leave until February 19, 2002. In addition, Rentas showed his leg to Pacheco to prove his incapacity to work. This was not an employee who carelessly failed to report for work, or one who intentionally ignored management's procedures. Even according to the Respondent's scenario, Rentas merely failed to call prior to his working time at 4 a.m., but he called the office secretary at about 7:30 a.m., he submitted a valid doctor's excuse on the same day and he showed his injured leg to Pacheco. Yet the Respondent uses this factual base and past infractions to rid itself of a skilled employee, one who could handle a complicated truck with 14 shifts. Under these circumstances, the record suggests a different motive, namely his union activity. To establish a prima facie of a violation of Section 8(a)(3) of the Act, the General Counsel must show that the employee was engaged in union activities, that the respondent harbored animus or hostility towards those activities, and discharged the employee because of those activities. Respondent may defend by proving that it would have discharged the employee in any event, even in the absence of any protected activities. *Wright Line,* 251 NLRB 1083 (1990), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *Transportation Management Corp.,* 462 U.S. 393 (1983). Here, it is clear that Rentas was one of the instigators of the employees' renewed interest in the Union. Although the Respondent argues that not a scintilla of evidence exists of any union activity prior to February 5, 2002, when it received a letter by fax that it had violated the collective-bargaining agreement, Rentas credibly testified about his union efforts. He was the first among the employees to contact the Union to find out more about the contract. He and the employees, including Supervisors Estrella and Rosario, attended union meetings where they were briefed by a union representative. Rentas credibly testified that Santos spoke to him on February 5, 2002, soliciting his cooperation in getting rid of the Union. Rentas refused. Rentas also recalled a

brief conversation with Santos on February 11, 2002 in the corporate office to discuss the concerns of Carlos Hernandez, an employee. During that exchange, Rentas openly revealed his union involvement and his intentions to file grievances. The record accordingly supports a finding of elements one and two under *Wright Line*, supra, that Rentas was engaged in union activities and that management was aware of it. Rentas was a leader in the employees' renewed interest in the union contract and the resurgence of the Union.

The third element that the employer's antiunion animus contributed to the decision to fire the employee has also been established. As stated, the Respondent unlawfully solicited Rentas' cooperation to decertify the Union. Significant were the observations made by management during the meeting on February 18, 2002, when Rentas was discharged. Santos stated that he was aware that Rentas was the one who "had imposed the Union." Rentas was called a traitor by management. Finally, the timing of the discharge, 7 days after these meetings, suggests a discriminatory motive. For these reasons, as well as the reasons discussed in the General Counsel's brief. I find that the third element has been satisfied.

I am also convinced that the Respondent has failed to show that Rentas would have been discharged even in the absence for union considerations. The record shows that the Employer tolerated past infractions far more serious, than the failure to report for work because of an illness. Moreover, the Respondent's reliance on the events of February 14, 2002, is certainly weak even considering the Company's references to past infractions. I accordingly reject any suggestion that Rentas would have suffered the same fate in the absence of his union support. Clearly, the Company's reasons for its action against Rentas were pretextual. This was accentuated by the Respondent's insistence that Rentas missed work on January 10, 2002, because he had attended a club and had been partying the night before. However, the record shows that Rentas had been assigned to the Searle route the night before. Searle was an important customer of the Company. Traditionally, drivers who are serving the Searle route on a particular night are not expected to report for work on the following day. That Rentas had been assigned this account was conceded by Santos. Nevertheless, the Respondent submits that Rentas had failed to work 40 hours during that week and submitted payroll and punch card documents in support. However, the notion that an employee was off work the day after the Searle account was not disproven. This provided yet another conjecture in the Respondent's attempt to justify its adverse action against Rentas. I therefore find that the Respondent violated Section 8(a)(1) and (3) of the Act.

Violation of the Act Relating to the Discharge of Hector Algarin

Hector Algarin was employed as a driver for Septix Waste from June 2001 until his discharge on May 8, 2002. His work hours were from 3 a.m. to 4 p.m. for a wage of $5.55 per hour. Algarin's duties included driving trucks, cleaning out grease traps and servicing portable toilets. Estrella was his supervisor until 2001 when Rosario became his supervisor after Estrella was dismissed. Algarin was on good terms with both supervisors.

He attended the January 2002 meeting at Estrella's home. He and the other employees played softball and would meet every Friday and also talk about the Union. He also took part in various other meetings held among the employees to encourage union involvement.

Algarin received a "warning" on February 25, 2002 signed by Lymaris Pacheco (GC Exh. 5). The warning was for using the company phone for personal calls.

In his testimony, Algarin admitted that he was not to call other drivers directly or to use the cellular phone to call home. Most of his calls were made to other employees (drivers) and one call to his home.

Algarin was suspended for an incident that occurred on April 2, 2002 (GC Exh. 6). He had failed to deliver two portable toilets to a client. His route sheet usually contains instructions about the service for each client. However, he only realized his error until he arrived at the clients' location. He promptly called his supervisor, Rosario to get instructions and was instructed to continue with his route. Another incident occurred with the next client, Buffalo Café, where he had to empty grease traps. He did not have the appropriate hose for the service, he therefore cut a longer hose of about 10.5 to 11 feet down to about 5 feet. Algarin submitted a written explanation to Wilda Perez stating that the truck was not properly equipped. Nevertheless, the Company charged him $100.95 for the replacement of the hose. He also received a 5-day suspension. Algarin had broken a hose early in his employment but had not received a warning. On May 3, 2002, Algarin was disciplined again in writing for the misuse of his cellular phone.

Algarin received another warning for an incident on May 2, 2002 for waiting an hour at a supermarket in Caguas, a client that had been regarded as important by Gary Santos (GC Exh. 8). He had arrived at the client at 5 a.m. and waited until 6 a.m. Algarin knew that he was to wait for only 15 minutes. He also did not attempt to call the Company to inform that he was waiting. He arrived late for his next stop, Plaza Rio Honda, but was unable to service the next two customers. He called the company and spoke with Katherine Troche, secretary for operations, to explain what had happened. He received a warning, dated May 6, 2002, for this incident because he had been instructed not to wait for any customer for longer than fifteen minutes.

The warning states inter alia (GC Exh. 6):

> **ADMONISHMENT**
>
> On Thursday, May 2, 2002, you went to provide services to a trap in a supermarket in Caguas. You waited one hour for the store manager to arrive. As a result of this waiting period, you arrived late to your next client (Plaza Rio Hondo) and could not provide the service to the traps on two stores. As you well know, you have to arrive early to the Shopping Centers, because after a certain time services cannot be provided in any of the stores, because they are serving meals and the odor affects them.
>
> At no time did you call your supervisor or Mr. Gary Santos, having all the telephones at your disposal to communicate that the manager of the supermarket had not arrived. When you arrived in the afternoon, you informed the Operations Assistant, Katherine Troche that you had to wait one hour because the manager was going to come in at 6:00 AM, by then your call was too late and at that time we could not resolve anything. You can wait for a client for no more than fifteen minutes and if you had to wait more, for whatever reasons, you must call any of us in order to authorize the waiting time, this is not something unknown to you.

On the same day, Algarin received another warning, which reads in part (GC Exh. 10):

ADMONISHMENT

> Today, Monday, May 6, 2002, you did not report to your duties of the day. Your arrival time was at 3:00 AM and at no time did you call your supervisor or Mr. Gary Santos, having all the telephones and a cellular phone, which the company provided you, at your disposal to call. It was not until 7:20 AM when you called your Supervisor, Mr. Porfirio Rosario, in order to inform him that you had problems with your car and it did not turn on. That due to that reason you were not able to come to work.

On May 8, 2002, Algarin was discharged for an incident, which happened on the prior day. The Company's principal complaint was that Algarin while servicing a customer agreed to include additional work, which delayed his duties for the rest of his workday. The warning states, inter alia, as follows (GC Exh. 12):

> DISCHARGE
>
> On May 7, 2002, you were responsible for doing the cleaning of two small grease traps in a Bayamon supermarket. Then you were responsible for providing service to Las Catalinas Mall in Caguas. At 7:30 AM, you called Supervisor, Porfirio Rosario, and informed him that you had to do two additional traps in the supermarket, because the manager requested from you. In addition, you asked him if you could enter Las Catalinas Mall since you were already heading there at that time. You arrived at Las Catalinas Mall at approximately 8:20 AM, and the guard did not allow you to enter to provide the service, because it was already too late.
>
> The service order of the supermarket clearly indicated the cleaning service of only two grease traps. You provided service to two other traps without authorization, only because the manager requested it. You know that you have to call and request authorization to provide services that are not annotated in the order. You have a cellular phone that is provided to you by the Company with all the telephone numbers of the office, cellular and our home telephone numbers. The services coordination of the grease traps is done at the main offices of the supermarket, not with the store managers. For that reason, we have to bill them for those two additional traps and there is no guarantee that they are going to pay us.
>
> We did not comply with the client of Las Catalinas mall because as a result of the two additional traps that you did in the supermarket, it took you more time that what was scheduled and arrived late to render the service at Las Catalinas mall. We must remind you that on Thursday, May 2, 2002, because you also arrived late we did not comply with Plaza Rio Hondo leaving two traps without being done, because you ran out of time. You know that this client you have to arrive before 7:00 AM.

With each written warning, the Respondent referred to disciplinary rules in the collective-bargaining agreement, which Algarin had violated. Moreover, the Respondent also sent copies of these written admonishments to the Union Representative Jose Budet.

In his testimony, Algarin attempted to rationalize his conduct and explain away his mistakes. However, in substance, the Respondent's documentation of Algarin's conduct appeared to be accurate.

For several reasons, I find the Respondent's conduct highly suspect. First, Algarin's trail of disciplinary warnings began after the renewed union activity among the employees, for he had not been disciplined during the first part of his tenure. Second, the principal reason for his discharge was his service on May 7, 2002, at the Las Catalinas Mall, for having complied with the customer's request to clean two additional traps. This caused his tardiness for the subsequent service calls. Again, his misconduct does not strike me as sufficiently severe to warrant a discharge. To be sure, this was a managerial decision, best evaluated by management. However, considered in the context of the Respondent's hostility to the Union's resurgence, as well as Respondent's careful efforts to notify the Union of each such occurrence and the Respondent's careful reference to the Discipline Rules in Section 3.30 of the contract, the inference is that Respondent's reasons for the discharge was union related and pretextual.

Again, under the *Wright line*, supra test, the General Counsel must show first that Algarin engaged in union activity. In this regard, the record shows that Algarin was among the employees who submitted a dues-checkoff card (GC Exh. 2). Algarin also attended the meetings in Estrella's home, which sparked the employees' renewal interest in the Union. Finally, Algarin was elected as the employee's spokesman or speaker for the group of employees although he did not fill that role. Carlos Baerga, another employee, was ultimately selected as the shop steward.

Secondly, the record shows that the Respondent knew of Algarin's union activity, as a result of his union dues check off, as well as his regular attendance at the employee gathering at Estrella's home. In attendance at those meetings was not only Estrella, a former supervisor, but also his successor, Rosario. I accordingly find, that Algarin was engaged in union activities and that management was aware of it.

The third element, that the Respondent harbored antiunion animus has already been established. The timing in the burst of disciplinary warnings issued to Algarin soon after the union activity is an indicator that the Respondent took the action because of the Union. For example, he had damaged a hose before while backing up his truck, he was not disciplined. He also made unauthorized calls on his cell phone without written reprimands. Clearly an inference can be drawn that the Respondent carefully crafted reprimands with references to the collective-bargaining agreement and with copies sent to the Union were the result of the Respondent's reaction to an employee suspected of being a union supporter.

Of significance in this connection is the Respondent's conduct in March 2002, when Santos met with each employee on a one-to-one basis. According to Algarin, the Respondent initially asked how Algarin was feeling. Santos then spoke about the discharge of Rentas and announced that henceforth everything was going to be handled as per the collective-bargaining agreement — that everything was going to be done in writing, on paper, I mean, admonistrations, suspensions, dismissals, as far as being justified (Tr. 109). Santos also told him to see what had happened for [him] to take a look at what had happened to Roberto Rentas; that he who played with fire got burned (Tr. 111). Clearly Rentas' discharge served as an example to the employees. As alleged in the complaint, the Respondent threatened its employee with job loss for engaging in union activities. This independent violation of Section 8(a)(1) corroborates and supports a finding, that the General Counsel has made out a prima facie case of a Section 8(a)(1) and (3).

The final element is whether the Respondent would have discharged this employee even in the absence of any union considerations.

At first blush, as argued by the Respondent, Algarin was not among the most outspoken union activists among the drivers. And it is also apparent that he received numerous warnings in such a relative short period of time. Algarin offered little or no explanation for some of his mistakes on the job. Considering the absence of any reprimands during Algarin's tenure prior to this union activity, the Respondent's hostility towards the employees' renewed interest in the union contract, as well as the Respondent's threat, it is clear to me that the Respondent has failed to prove a defense. For example, other employees were reprimanded for similar misconduct, but not discharged. The Respondent testified that German Gates received two warnings for calling two and a half hours after his shift started, as well as a warning for not completing a service, but he is still employed at Septix Waste. Another employee, Edwin Lopez, received two warnings for tardiness, a warning for leaving the yard late, and a suspension for unjustified absences all within a four-month period. Pacheco testified that he is close to a discharge if he commits one more error.

Considering the unlawful threat and the discriminatory discharge, I conclude that the Respondent violated Section 8(a)(1) and (3) of the Act.

Another independent violation of Section 8(a)(1) was shown by the testimony of Hector Baerga, who functioned as a union delegate or shop steward in March 2002. He left his employment at the Company on May 8, 2002. During his discussion about grievances in March 2002 with Santos, the latter stated that the grievances were a waste of time. This statement insinuates that the filing of grievances under the union contract were futile. Such a statement is coercive according to Section 8(a)(1) of the Act.

The Request for Information

By letter of July 8, 2002, Jose Budet, union representative, requested the Respondent to provide the Union with the mailing address of six named employees (GC Exh. 4). The Respondent, stating that it had to protect the privacy of its employees, refused to furnish the requested information.

In resolving issues posed, the Board uses the balancing test of *Detroit Edison v. NLRB*, 440 U.S. 301 (1979). As the Board has explained,

> An employer has a statutory obligation to provide requested information that is potentially relevant and will be of use to a union in fulfilling its responsibilities as the employees' exclusive bargaining representative. . . .
>
> A union's interest in relevant and necessary information, however, does not always predominate over other legitimate interests. . . . Thus, in dealing with union requests for relevant but assertedly confidential information possessed by an employer, the Board is required to balance a union's need for the information against any legitimate and substantial confidentiality interest established by the employer.

GTE California, Inc., 324 NLRB 424, 426 (1997).

Here, the information sought by the Union is relevant to its statutory obligation to represent all the unit employees and to inform them of the collective rights.

Clearly, the identity of unit employees, including their addresses and telephone numbers are presumptively valid. *Dyncorp/Dynair Services,* 322 NLRB 602 (1996). The Respondent's refusal to provide the information violated Section 8(a)(1) and (5) of the Act.

Conclusions of Law

1. Septix Waste, Inc., Ponce, Puerto Rico, is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

2. Gary Santos and Lymaris Pacheco are supervisors and agents of Respondent within the meaning of Section 2(11) and 2(13), respectively.

3. Union de Tronquistas de Puerto Rico, Local 901, IBT, AFL-CIO, the Union, is a labor organization within the meaning of Section 2(5) of the Act.

4. The Union has been the exclusive collective-bargaining representative of the following unit:

> INCLUDED: All the workers employed by the Company Septix Waste, Inc., including those in service and maintenance, at its places of business in Road #1, Km. 122.4, Calzada Ward of Mercedita, Puerto Rico and at its offices throughout the island of Puerto Rico, pursuant to Case #24-RC-7628, National Labor Relations Board.
>
> EXCLUDED: All other clerical employees, managers, guards and supervisors as defined by the National Labor Relations Act.
>
> This recognition has been embodied in a collective-bargaining agreement, which is effective from January 1, 1999 to December 31, 2004.

5. By failing or refusing to furnish the Union with the information requested by letter of July 8, 2002, namely the names, addresses and telephone numbers of six employees, the Respondent violated Section 8(a)(1) and (5) of the Act.

6. By soliciting its employees to gather signatures to decertify the Union, the Respondent violated Section 8(a)(1) of the Act.

7. By informing its employee that the filing of grievances would be futile, the Respondent violated Section 8(a)(1) of the Act.

8. By threatening its employee with the loss of jobs, the Respondent violated Section 8(a)(1) of the Act.

9. By discharging its employees Roberto Rentas and Hector Algarin, the Respondent violated Section 8(a)(1) and (3) of the Act.

10. The other allegations in the complaint have not been substantiated.

THE REMEDY

Having found that the Respondent has violated Section 8(a)(1), (3), and (5) of the Act, I recommend that it be required to cease and desist therefrom and from any like or related

manner interfering with, restraining, or coercing its employees in the exercise of their rights under Section 7 of the Act. Further, the Respondent shall be required to offer employees Roberto Rentas and Hector Algarin, immediate and full reinstatement to their former positions of employment and make them whole for any loss of wages and other benefits they may have suffered by reason of Respondent's discrimination against him in the manner prescribed in *F. W. Woolworth Co.,* 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded,* 283 NLRB 1173 (1987). In addition, the Respondent shall be required to post an appropriate notice, attached as an Appendix. Having found that the Respondent refused to furnish the Union with relevant information, the Respondent must be ordered to provide the information.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[1]

ORDER

The Respondent, Septix Waste, Inc., Ponce, Puerto Rico, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to furnish the Union with the relevant and necessary information.

(b) Soliciting its employees to decertify the Union.

(c) Informing its employees that the filing of grievances is futile.

(d) Threatening its employees with job loss because of their union support.

(e) Discharging its employees or otherwise discriminate against them because of their union support.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed to them under Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the purposes of the Act.

(a) Furnish the Union with the information requested by the Union.

(b) Within 14 days from the date of this Order, offer Roberto Rentas and Hector Algarin full reinstatement to their former jobs or, if the jobs no longer exist, to substantially equivalent positions without prejudice to seniority or any other rights or privileges previously enjoyed. Make Roberto Rentas and Hector Algarin whole for any loss of earnings and other benefits suffered as a result of the discrimination against them in the manner set forth in the remedy section of the decision.

[1] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges and within 3 days thereafter notify the employees in writing that this has been done and that the discharges will not be used against them in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order."

(e) Within 14 days after service by the Region, post at its facility in Ponce, Puerto Rico, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 24, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 5, 2002.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. December 17, 2003.

Karl H. Buschmann
Administrative Law Judge

[2] If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT refuse to give the Union the information that it needs to represent you.

WE WILL NOT solicit you to decertify the Union.

WE WILL NOT inform you that the filing of grievances is futile.

WE WILL NOT threaten you with job loss because of your union support.

WE WILL NOT discharge or otherwise discriminate against you because of their union support.

WE WILL NOT, in any like or similar manner, interfere with you in the exercise of your rights under the National Labor Relations Act.

WE WILL give the Union the information it needs to represent you.

WE WILL offer to Roberto Rentas and Hector Algarin employment, or if such position no longer exist, substantially equivalent positions without prejudice to their seniority or other rights previously enjoyed by them.

WE WILL make them whole in the manner set forth in the Remedy provisions of this decision from the date of their discharge, until the date of a valid offer of employment or reinstatement.

WE WILL expunge from our files any reference to the unlawful discharges and notify them in writing that this has been done and that this personnel action will not be used against them in ay way.

SEPTIX WASTE, INC.

(Employer)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

525 F. D. Roosevelt Avenue, La Torre de Plaza, Suite 1002, San Juan, PR 00918-1002

(787) 766-5347, Hours: 8:30 a.m. to 5 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (787) 766-5377.